D.B. CIVIL SPECIAL APPEAL(W)NO.290/2007

State of Rajasthan & Ors.
Vs.
Smt. Ganga Devi

DATE OF ORDER :: 14-05-2007

HON'BLE THE CHIEF JUSTICE SHRI S.N.JHA
HON'BLE SHRI JUSTICE MOHAMMAD RAFIQ

Shri H.V. Nandwana, Dy.G.A. for the State.

The application seeking condonation of 139 days' delay has been put up for consideration but we looked into prima facie merit of the case so that condonation may not be a futile exercise, and accordingly heard the counsel.

This appeal is directed against the order by which the writ petition of the respondent was allowed. The dispute relates to selection grade. By the order impugned in the writ petition, the State wanted to recover the alleged excess paid pursuant to grant of selection grade. The case of the State is that the service record of the respondent's husband was not satisfactory but overlooking the record the grade was released. The mistake came to notice when his pension papers were being examined. We are of the view that the question as to whether the service record of an employee is satisfactory or not is a matter of opinion and once having released selection grade, recovery of the alleged excess on the basis of another opinion would not be justified,

more so when an employee has not only retired from service but is no more.

It was submitted that the excess payment resulted in unjust enrichment and in this regard reference was made to Section 72 of the Contract Act and reliance was placed on Abdul Salam & Anr. Vs. Maharana Pratap University & Ors, 2004 WLC (UC)621. We do not think in the facts of the case, the alleged excess payment resulted in unjust enrichment. In our view, the principle of unjust enrichment is not attracted where some benefit is extended on interpretation of any rule or the like i.e. on the basis of formation of opinion. Facts of the cited case are not clear and it is not known whether the Court was dealing with the case of a retired employee. In the facts and circumstances of the case, we are not inclined to interfere with the order. However, it is clarified that the question of recovery of alleged excess amount invariably depends on the facts of the case, and therefore these orders may not be cited as precedent.

The appeal is dismissed.

[MOHAMAAD RAFIQ],J. **[S.N.JHA],CJ.**

Praveen